

REMARKS

The following remarks are filed as a submission accompanying the request for continued examination concurrently filed in response to the Advisory Action mailed November 19, 2008 and the Office Communication mailed December 2, 2008.

Applicants note that the Advisory Action indicates that the previous amendments of claims 18-20 submitted on November 4, 2008 were entered and the new matter rejection was withdrawn. However, the Office has maintained the obviousness rejection over the two prior art references Andou et al. and Hötten et al. While Applicants clearly stated in the previous response that the claimed invention and the two prior art references were owned by the same person at the time the claimed invention was made, the Office refused to accept the Applicants' statement without supporting evidence.

MPEP 706.02(I)(2)II clearly states that

[t]he following statement is sufficient evidence to establish common ownership of, or an obligation for assignment to, the same person(s) or organizations(s): Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

MPEP 703.02(I)(2)II (citing "Guidelines Setting Forth a Modified Policy Concerning the Evidence of Common Ownership, or an Obligation of Assignment to the Same Person, as Required by 35 U.S.C. 103(c)," 1241 O.G. 96 (December 26, 2000)).

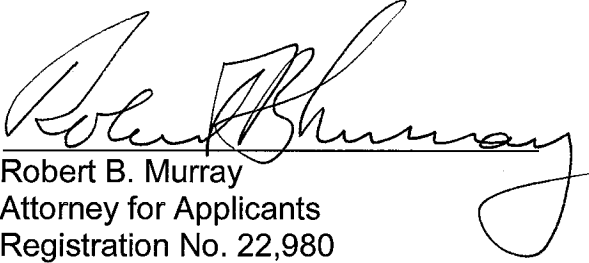
MPEP further explains that “[t]he applicant(s) or the representative(s) of record have the best knowledge of the ownership of their application(s) and reference(s), and their statement of such is sufficient evidence because of their paramount obligation of candor and good faith to the USPTO. Id. (emphasis added).

Following the MPEP, Applicants hereby again make the statement of common ownership of the claimed invention and the two prior art references in a separate page which is attached hereto.

Relying on the statement of common ownership as set forth in the attachment, Applicants respectfully submit that Applicants have clearly and conspicuously established that the claimed invention and the two prior art references were owned by the same person at the time of the claimed invention. Thus, under 35 U.S.C. §103(c), the cited prior art references are disqualified as prior art against the claimed invention. Accordingly, the current rejection becomes moot under 35 U.S.C. §103(c). Applicants respectfully request withdrawal of this rejection.

In view of the foregoing, it is submitted that the present application is now in condition for allowance. Reconsideration and allowance of the pending claims are requested. The Director is authorized to charge any fees or overpayment to Deposit Account No. 02-2135.

Respectfully submitted,

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STATEMENT OF COMMON OWNERSHIP

Applicants submit that the claimed invention and the two prior art references, U.S. Patent Nos. 6,972,321 to Hötten et al. and 6,551,801 to Andou et al. were owned by, or subject to an obligation of assignment, the same person, Mr. Michael Paulista, at the time the claimed invention was made. The common owner, Mr. Michael Paulista, was the sole owner of both HyGene AG and Biopharm Gesellschaft zur Biotechnologischen Entwicklung von Pharmaka GmbH at the time the claimed invention was made.

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